


**MARYLAND HEALTH CARE COMMISSION**

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**MEMORANDUM**

**TO:** Commissioners

**FROM:** Kevin R. McDonald  
Chief, Certificate of Need 

**DATE:** April 17, 2014

**SUBJECT:** Seasons Hospice and Palliative Care of Maryland, Inc. – Franklin Square  
Docket No. 11-03-2318

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Enclosed is the staff report and recommendation on the request by Seasons Hospice and Palliative Care of Maryland, Inc. – Franklin Square for a Project Change after CON Approval (“modification request”) for the above-referenced project approved by the Commission in July of 2013.

The originally approved project cost was \$621,197. A combination of construction bids that exceeded estimates, design changes intended to enhance the unit, increased equipment costs, increases in architectural and engineering fees, and a needed contingency allowance have increased the estimated project cost by \$454,014 (73%), bringing the total anticipated cost to \$1,075,211. Under the Commission’s regulations a cost increase that exceeds the permissible inflation allowance thus requires a request for modification of the CON.

Staff has reviewed the request and determined that the requested modification does not change the Commission’s earlier findings regarding need, viability, or impact on other providers, and thus recommends **APPROVAL** of the request.

**IN THE MATTER OF**

**SEASONS HOSPICE AND  
PALLIATIVE CARE OF MARYLAND,  
INC. - FRANKLIN SQUARE**

**DOCKET NO. 11-03-2318**

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**BEFORE THE**

**MARYLAND HEALTH  
CARE COMMISSION**

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## **REQUEST TO MODIFY CERTIFICATE OF NEED**

### **I. INTRODUCTION**

The Maryland Health Care Commission (MHCC) granted Seasons Hospice and Palliative Care of Maryland, Inc. (Seasons) a Certificate of Need (CON) to develop a 16 bed inpatient hospice unit at MedStar Franklin Square Medical Center (Franklin Square) on July 13, 2013. Gilchrist Hospice Care, Inc. and Stella Maris, Inc. participated as interested parties in the contested case and have since filed petitions for judicial review of the Commission's decision.

The Commission issued the CON with an approved project cost of \$621,197. Seasons has requested Project Change after CON Approval, stating that a combination of construction bids that exceeded estimates, design changes intended to enhance the unit, increased equipment costs, and increases in architectural and engineering fees, and a needed contingency allowance have increased the estimated project cost by \$454,014 (73%), bringing the total anticipated cost to \$1,075,211. This amount exceeds the permissible inflation allowance.

### **II. APPLICABLE REGULATIONS**

Under the Commission's regulations, at COMAR 10.24.01.17B, the following changes to an approved CON require the Commission's approval:

1. A significant change in physical plant design;
2. Capital cost increases that exceed the approved capital cost inflated by an amount determined by applying the Building Cost Index published in Health Care Cost Review from the application submission date to the date of the filing of a request for approval of a project change;
3. If total projected operating expenses or revenue increases exceed the projected expenses or revenues in the approved Certificate of Need Application, inflated by 10 percent per year;
4. Changing the financing mechanisms of the project; or
5. Changing the location or address of the project.

Seasons' request to modify its CON for this project involves a capital cost increase that exceeds the approved capital cost inflated by an amount determined by applying the Building Cost Index published in Health Care Cost Review from the date that Seasons submitted its CON application (July 8, 2011) to the date it filed the request for approval of the project change (December 20, 2013).<sup>1</sup> Accordingly, this request must be reviewed and approved by the Commission.

The actions available to the Commission are found in **COMAR 10.24.01.17D(3)**:

(3) The Commission shall provide written notification to the applicant within 45 days of the Commission's receipt of the change request that:

- (a) The proposed change is approved and is incorporated into a modified Certificate of Need for the project;
- (b) The proposed change is approved in part or approved with conditions;
- (c) The proposed change is not approved, with explanation; or
- (d) The proposed change is of sufficient scope to warrant complete review in accordance with the Certificate of Need review process described in Regulations .08—.10 of this chapter, and may only be considered upon completion of this review

### **III. COST INCREASES AND FINANCIAL IMPACT OF THE PROPOSED MODIFICATION**

#### **CON-approved cost compared to modification request**

Table 1 compares the project costs as originally approved to the costs in the modification request.

<b>Table 1: Comparison of Approved Project Cost and New Cost Estimate</b>		
<b>Project Elements</b>	<b>Approved</b>	<b>Requested Modification</b>
<b>Capital costs</b>		
Renovations	\$400,000	\$684,281
A/E fees	\$30,000	\$77,268
Permits	\$5,000	\$5,000
Minor moveable equipment	\$100,000	\$200,000
Contingencies	-- --	\$38,662
Inflation	\$16,197	\$17,388
<b>TOTAL PROPOSED CAPITAL COSTS</b>	<b>\$552,388</b>	<b>\$1,005,211</b>

<sup>1</sup> Seasons' request to modify the CON does not involve any significant change in physical plant design, operating expense or revenue, financing, or location of the project.

Financing costs and other cash requirements	\$30,000	\$30,000
Legal fees (CON-related) Consultant fees - CON	\$20,000	\$20,000
Legal fees (other)	\$20,000	\$20,000
<b>TOTAL PROJECT COST</b>	<b>\$621,197</b>	<b>\$1,075,211</b>

Seasons' explanation of the increases in the project cost estimate can be summarized as follows:

- **Construction costs account for \$284,000 (62.6%) of the cost increase.** Bids exceeded estimates by about \$195,000; the remaining overage of \$89,000 is accounted for by design improvements over the initial plan, including upgrade of ceiling tiles, upgrade of fire alarm, additional patient bathrooms and a new hall shower.
- **Architectural and Engineering (A/E) fees have increased from \$30,000 to \$77,268.** A/E increases are due to additional work being planned plus value engineering.
- **Minor movable equipment costs have increased from \$100,000 to \$200,000.** Minor movable equipment increase (\$100,000) is for IT equipment needed for compatibility with the hospital's network.
- **Contingency up from \$0 to \$38,662.** Initial project budget lacked a contingency allowance.

#### **Inflation allowance**

Capital cost increases that exceed the inflation allowance calculated using the inflation index published on a quarterly basis by IHS Global Insight in Healthcare Cost Review require Commission approval under COMAR 10.24.01.17B(2).

Inflation is figured from the application submission date (July 8, 2011- the 3<sup>rd</sup> quarter, 2011) to the date of the filing of a request for CON modification (December 20, 2013 – the 4<sup>th</sup> quarter, 2013). The allowable inflated capital cost is \$550,408, allowing inflation of \$15,408 over the originally-approved capital cost. The projected cost increase of \$454,014 is far above the allowable inflation level and, therefore, requires the Commission's review.

#### **Impact on operating cost and revenue**

The only impact on either operating cost or revenue is an increase in depreciation expense. This expense line item is identified as increasing from \$100,000 per year in the first two years of operation (implying an assumed depreciation schedule of slightly over five years for the "hard" project cost) to \$111,690 per year in the first two years of operation. As this is a non-cash expense, it has no impact on project viability, nor will it have any impact on rates paid by Medicare or other payers. Medicare is expected to account for 85% of the revenue supporting operation of this project.

### **IV. ANALYSIS AND RECOMMENDATION**

Although the increase in project cost is significant, the proposed modification would not have a material effect on the findings made by the Commission with respect to the cost and effectiveness of alternatives or project viability. The modification has no impact on the rates that

will be paid for inpatient hospice care by the primary payor, Medicare. Because no material changes are occurring in the location, capacity, or nature of the project, the requested modification does not change the need for the project or its impact on existing providers.

The Commission found that the proposed Seasons inpatient hospice unit at Franklin Square would be able to operate at a level of cost relative to effectiveness that is comparable to that of hospice-operated inpatient options currently available in the Baltimore area. The decision noted that the establishment of this inpatient hospice unit at Franklin Square was more cost effective than having hospice-eligible patients die as general acute hospital inpatients and that the availability of this unit would result in hospice-eligible hospital inpatients choosing this less costly setting. The decision also concluded that this type of hospital campus-based facility would generate use of hospice services that would not result from other options, such as free-standing hospices or the use of available nursing home or inpatient hospital beds for hospice patients. The proposed increase in project costs has a relatively small impact on the cost of operating this inpatient facility over its life, and does not fundamentally alter the finding on this matter.

The Commission found that Seasons' hospice project was likely to be economically viable in both the short- and long-term. The Commission also found that Seasons has the financial and non-financial resources necessary to implement and sustain the project. The proposed increase in the capital costs of the project does not change either of these findings. The decision noted that "an important perspective informing [its] finding with respect to viability and its importance in making a recommendation on this project is that inpatient hospice care is not the primary business activity of the applicant entity and the downside risk involved for Seasons if the proposed project does not perform as anticipated is not great." The proposed increase in capital costs does not change this reasoning.

Seasons' proposed modification is not an "impermissible modification" as defined in COMAR 10.24.01.17(C)(1)-(3), and therefore does not require a new CON. Accordingly, staff recommends that the Commission **APPROVE** the proposed modification of the Certificate of Need issued to Seasons Hospice and Palliative Care of Maryland, Inc. for its general inpatient unit at Franklin Square (Docket No. 11-03-2318).